

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 17

CAPTIVE INSURANCE COMPANIES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-17-1 Purpose and authority. The purpose of this rule is to set forth the financial, reporting, and record-keeping requirements which the commissioner

deems necessary for the regulation of captive insurance companies, as authorized by the captive insurance law, chapter 431, article 19, Hawaii Revised Statutes. Reference hereunder to "captive" shall mean captive insurance company or companies, unless otherwise specified. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

§16-17-2 Definitions. For purposes of this chapter:

"Adverse financial condition" means one or more of the following conditions:

- (1) The impairment of capital resulting from an imbalance of liabilities and assets;
- (2) Financial ratios exceeding levels established by the commissioner; and
- (3) The material degradation of financial results envisioned by the certified public accountant through predictive forecasting.

"Unauthorized reinsurer" means a reinsurer that is not licensed or authorized to conduct the business of insurance in this State. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

SUBCHAPTER 2

FORMATION PROVISIONS

§16-17-5 Capital and surplus requirements. (a) Capital and surplus requirements will be established on a case-by-case basis. An applicant may expect minimum capitalization to be as follows:

- (1) Pure captives - \$250,000;
- (2) Association captives - \$750,000; and
- (3) Risk retention group captives - \$500,000.

(b) The commissioner retains discretion to set individual capital and surplus requirements based on the facts and circumstances of a particular application. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §§431:19-104, 431:19-105)

§16-17-6 Fee schedule. (a) The commissioner may utilize advisors other than departmental staff to review captive applications.

(b) Application review fees for captives should be approximately \$3,500 for pure captives and \$7,500 for association and risk retention groups, contingent upon the complexity of the application.

(c) The actual application review fees charged by approved advisors will be based on the following factors:

- (1) The advisor's hourly rate;
- (2) The number of hours of review;
- (3) The simplicity or complexity of the proposed captive;
- (4) The need for revision of the application; and
- (5) Additional review time of revised application.

(d) The rates and fees charged by approved advisors shall be subject to the review of the commissioner. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-102)

SUBCHAPTER 3

POST-FORMATION PROVISIONS

§16-17-10 Notification of adverse financial condition. A captive shall require its certified public accountant to immediately notify in writing the executive officers and board of directors of the captive of any determination by the certified public accountant that the captive has materially misstated its financial condition or that, since its last financial report has experienced results which lead to the determination by the certified public accountant that it is in adverse financial condition. The captive shall furnish such notification to the commissioner within five working days of receipt thereof. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-107(d))

§16-17-11 Additional deposit requirement. (a) Whenever the commissioner deems that the financial condition of the captive warrants additional security, the commissioner may require a captive to deposit with the commissioner in trust for the captive cash or securities approved by the commissioner or, alternatively, to furnish the commissioner an irrevocable letter of credit issued by a bank chartered by the State of Hawaii or a member bank of the Federal Reserve System, or other securities approved by the commissioner.

(b) If such captive discontinues business, the commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §§431:19-104, 431:19-105)

§16-17-12 Availability and maintenance of working papers of the independent certified public accountant. (a) Each captive shall require its independent certified public accountant to make available for review by the commissioner or appointed agent the work papers prepared in the conduct of the audit of the captive. The captive shall require that the accountant retain the audit work papers for a period of not less than five years after conclusion of transactions to which they relate.

(b) The review conducted in (a) above shall be considered investigations and all working papers obtained during the course of such investigations shall be confidential. The captive shall require that the certified public accountant provide photocopies of any of the working papers which the commissioner considers relevant. Such working paper copies may be retained by the insurance division.

(c) "Work papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the accountant and employees in the conduct of their examination of the captive. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-102.5, 431:19-107, 431:19-108)

§16-17-13 Documentation required to be held in Hawaii, by Hawaii licensed captives. (a) All captives licensed by the State of Hawaii, shall maintain and make ready for inspection and examination any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each such captive.

(b) Original documents may be kept in the offices of the captive manager, the parent, or the captive itself. True and complete copies shall be held in a Hawaii office designated by the captive and approved by the insurance commissioner. Such documents shall include but not be limited to the following:

- (1) Regulatory records:
 - (A) Certificate of authority;
 - (B) Certificate of public good;
 - (C) Articles of incorporation and by-laws;
 - (D) Corporate resolutions and minutes;
 - (E) Full application for admission and related documents, and all changes and amendments to application;
 - (F) All filings and correspondence with various other jurisdictions;

- (G) Annual report filed with Hawaii insurance division since commencement of business; and
 - (H) Correspondence with Hawaii insurance division and advisors.
- (2) Loss and expense records:
- (A) Reports certifying loss reserves, allocated loss adjustment expense reserves and rates by an actuary according to section 431:19-107(c);
 - (B) Incurred loss reports (loss runs) including:
 - (i) Claim numbers;
 - (ii) Occurrence date;
 - (iii) Report date;
 - (iv) Line of coverage;
 - (v) Paid to date;
 - (vi) Reserve amount;
 - (vii) Date closed;
 - (viii) Policy period; and
 - (ix) Loss valuation date;
 - (C) Schedule of subrogation, salvage, reinsurance, recoverables;
 - (D) Claim file summaries and correspondence; and
 - (E) Summary narrative review of each large loss (ten per cent of retention).
- (3) Accounting files:
- (A) Audited financial statements since start-up;
 - (B) Auditors opinion letters and reports;
 - (C) Chart of general ledger accounts;
 - (D) Ledgers (general, payable, receivable);
 - (E) Journals (general, cash receipts, disbursements);
 - (F) Documentation supporting accounting records;
 - (i) Bank statements and reconciliation;
 - (ii) Checks and deposit slips;
 - (iii) Signature authorization cards and board resolution of approval;
 - (iv) Letter of credit and other approved security or guarantees, with board approvals;
 - (v) Investment statements, documentation, board approval;
 - (vi) Premium invoices, deferrals, payment plans;
 - (vii) Deferred start-up/acquisition cost statement, board approval; and

- (viii) Schedule of premium taxes and fees paid and payable.
- (4) Fronting arrangements:
 - (A) Signed, approved fronting agreement, with board approval;
 - (B) Reports and correspondence with front or underwriters; and
 - (C) Audit reports and board acceptance.
- (5) Reinsurance reports:
 - (A) Reinsurance agreements and amendments, with board approval;
 - (B) Binders, cover notes, slips;
 - (C) Correspondence with brokers and underwriters;
 - (D) Evidence of reinsurance premium payments with board approval;
 - (E) Reinsurance audit reports or letters with board approvals; and
 - (F) Letters of credit with notice to the commissioner if "call" is made.
- (6) Insurance policy records:
 - (A) Policy register - numeric control;
 - (B) Application summaries;
 - (C) Declaration pages, forms, and endorsements;
 - (D) Binders, cover notes, certificate of insurance;
 - (E) Schedule of exceptions to normal underwriting/implementation process;
 - (F) Risk control reports and policyholder response/implementation plan; and
 - (G) Underwriting and rating plans, with board approvals.
- (7) Professional services providers:
 - (A) Contracts or agreements with providers of captive services, with board approval;
 - (i) Actuary;
 - (ii) Banker/trust department;
 - (iii) Brokers;
 - (iv) Claim managers;
 - (v) Investment managers/advisors;
 - (vi) Lawyers;
 - (vii) Program/underwriting managers;
 - (viii) Risk control advisors; and
 - (ix) Risk management advisors;
 - (B) Non-privileged reports and correspondence with each.

- (8) Other information which the commissioner deems pertinent. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-108 (b))

16-17-14 Reinsurance. (a) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing such reinsurance.

(b) Notwithstanding the requirements of section 16-17-8, the commissioner for good cause being shown may waive such requirements for the filing and/or approval of reinsurance treaties and contracts.

(c) Prior to issuance of the certificate of authority, the reinsurance should be in place to commence effectiveness upon issuance of the certificate of authority.

(d) Unauthorized reinsurance companies will be subject to approval by the insurance commissioner and may, at the commissioner's discretion be required to submit for review the following:

- (1) A copy of its most recent or current annual report;
- (2) An actuarial reserve opinion; and
- (3) A set of audited financial reports. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-111)

§16-17-15 Changes in captive business plan, operations, leadership, and ownership. (a) The captive shall obtain prior approval from the commissioner before implementing changes in its business plan, operations, or ownership.

(b) The captive shall immediately notify the insurance commissioner upon making changes in board members or officers.

(c) Notification of a request for approval or changes in business plan, operations, leadership, or ownership shall be accompanied by an appropriate board resolution authorizing such changes. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §§431:19-106, 431:19-109)

§16-17-16 Suspension or revocation of license. (a) The commissioner may, at the request of the captive, by order suspend or revoke the license of the captive.

(b) The commissioner may by order suspend or revoke the license of a captive for any reason provided in section 431:19-109, HRS.

(c) In case of suspension or revocation the commissioner will advise the captive of procedures and requirements for ongoing operations and winding

up of captive business. [Eff 5/13/91] (Auth: HRS §431:19-114) (Imp: HRS §431:19-109)

Chapter 16-17, Hawaii Administrative Rules, on the Summary Page dated April 17, 1991, was adopted on April 17, 1991, following a public hearing held on April 17, 1991. Public notices were given in the Honolulu Advertiser and Honolulu Star-Bulletin on March 15, 1991, and in the Garden Isle, Maui News, Hawaii Tribune-Herald and West Hawaii Today on March 17, 1991.

The adoption of Chapter 16-17 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Robin K. Campaniano

ROBIN K. CAMPANIANO

Commissioner of Insurance

APPROVED AS TO FORM: Date 4/25/91

/s/ Diane Erickson

Deputy Attorney General

APPROVED: Date 4/26/91

/s/ Robert A. Alm

ROBERT A. ALM

Director of Commerce and Consumer Affairs

APPROVED: Date 5/2/91

/s/ John Waihee

JOHN WAIHEE

Governor of Hawaii

May 2, 1991

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-17
Hawaii Administrative Rules
April 17, 1991

SUMMARY

Chapter 16-17, Hawaii Administrative Rules, entitled "Captive Insurance Companies," is adopted.